

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Request for Review by)

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Sandhills Technology/Telecommunications)

Educational Project)

of Decision of the)

Universal Service Administrator)

FCC Doc. Nos. 97-21 and 96-45

Funding Request Number 237457

To: The Commission

APPEAL OF SCHOOLS AND LIBRARIES DIVISION DECISION

Sandhills Technology/Telecommunications Educational Project ("STEP"), pursuant to SectionS 54.719-721 of the Federal Communications Commission's rules and regulations, 47 C.F.R. Secs. 54.719-721 hereby appeals the Universal Service Administrative Company ("USAC") Schools and Libraries Division ("SLD")'s decision rejecting STEP's appeal of the denial of its application for e-rate funding for Year 2.¹

PARTY'S INTEREST

The interested party is the Applicant for discounted telecommunications services for education purposes, STEP.

STATEMENT OF FACTS

In order to improve their education systems, in 1992, several school districts located in a remote portion of central Nebraska known as the "sandhills," formed a consortium, the Sandhills Technology/Telecommunications Educational Project ("STEP "), and entered into a ten-year

¹Letter from USAC/SLD dated May 31, 2001 (Attachment 1).

contract with two local telephone companies, Consolidated Telephone Company (“Consolidated”) and The Nebraska Central Telephone Company (“Nebraska Central”) (jointly “the LECs”) to lease the LECs’ jointly owned fiber optic network facilities for interactive video “distance learning” to and among their schools.²

To facilitate the provision of distance learning services to the consortium of schools, Consolidated and Nebraska Central formed a partnership, “NebCon” to operate the network.³ The network consists of two dark-fiber, single-mode, fiber optic strands for an analog system serving the school sites. This transmission capacity is largely derived from preexisting facilities of the LECs, supplemented by a portion owned by NebCon.

NebCon, which takes its name from the two LECs, was formed by the LECs for two purposes: to facilitate joint ownership of network capacity connected by the two existing networks, and as an entity to facilitate contracting with the schools for distance learning. NebCon is jointly owned by the LECs on an equal basis. Nebraska Central is the Managing Partner. In addition to offering capacity for the distance learning project, the network is available to other customers for use, such as for lease to US West (now Quest), in whose exchange the network is located in part, for “diverse routing” of US West exchanges.

In 1998, STEP applied for, and was granted “e-rate” funding for the telecommunications services provided by the NebCon-operated network.⁴ Because the school districts in the consortium served rural and low-income areas, the consortium qualified for a 70% discount of

²Facilities Lease Agreement, Attachment 2.

³Partnership Agreement, Attachment 3.

⁴1998 Application and grant, Attachment 4.

the approximately \$100,000 cost of the services in Year 1.

For Year 2, STEP again applied for e-rate support for the telecommunications services provided over the NebCon network. For that year, however, the SLD denied the application on the basis that NebCon was an “invalid provider” because it concluded NebCon was not a common carrier.⁵

On December 3, 1999, STEP appealed the denial of funding for Year 2, pointing out that NebCon was wholly owned by common carriers, Consolidated and Nebraska Central.⁶ In its appeal, STEP also noted that the LECs were designated “eligible telecommunications carriers” in 1997, and therefore specifically eligible to receive universal service funding.

On advice of USAC management staff, STEP also requested that Nebraska Central be substituted for NebCon as the provider/vendor.⁷

On May 31, 2001, the SLD rejected STEP’s appeal and upheld its previous finding that NebCon was not a common carrier of telecommunications services, and therefore was not eligible for the e-rate discount in 1999. SLD further denied STEP’s request that the telecommunications provider be changed from NebCon to Nebraska Central.

ISSUE ON REVIEW

The issue on review is whether the SLD erred in denying STEP’s application for funding in the second year for a pre-existing contract for telecommunications services provided in the same manner by the same vendor as the first and third years, in violation of Section 254 of the

⁵1999 SLD denial of application, Attachment 5.

⁶Attachment 6.

⁷Attachment 7

Telecommunications Act of 1996⁸ and Section 54.501 of the Federal Communications Commission rules and regulations.

SLD SHOULD HAVE GRANTED THE APPLICATION FOR FUNDING IN YEAR 2

Introduction

SLD denied funding for the second year on the basis that the provider was not a common carrier and therefore it was ineligible for universal service support from the Schools and Libraries program. As the facts demonstrate, not only did the applicant qualify for discounted telecommunications services for Year 2 because services were provided by a common carrier, the application presented the kind of application for which the discount program was intended: telecommunications service to provide distance learning education in a rural, high-cost, low-income area.

SLD's Denial was Based on Factual Error

SLD denied STEP's appeal based on SLD's conclusion that STEP changed vendors in the second year of funding. "SLD is unable to grant your request because "program rules do not allow for the changing of vendors on a request that has been denied."⁹ SLD's assumption was incorrect. STEP did not change vendors; it continued, and continues to this day, to receive service from the telecommunications network owned by Consolidated and Nebraska Central and operated by the NebCon partnership. The only thing that changed was a file number on an application form. By rejecting STEP's application for funding in Year 2, the SLD emphasized form over substance, and ignored its opportunity, and indeed its obligation, to fund eligible

⁸Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. Sec.151 et seq.

⁹May 31, 2001 letter at p.1. (Attachment 1)

services.

Service is Provided by a Common Carrier

The LEC-Owners are Common Carriers

NebCon was and is wholly-owned by common carriers, Consolidated and Nebraska Central and the service is provided over facilities owned in part by each of the partners and in part by the Partnership. While the partnership form is used for the convenience of the school system customer, the function of service provision is accomplished by the local exchange carriers. On that basis, funding should have been granted.

Evidence that the LECs were the service providers could have and should have been gleaned by SLD: First, the parties to the "Facilities Lease Agreement" for the subject services were STEP and the LECs.¹⁰ Second, the "Certification of Partnership" establishing NebCon¹¹ makes clear that the telecommunications service for which a discount was requested was provided by Consolidated and Nebraska Central. SLD should have looked to the LEC-owners, the source of the fiber operated by NebCon - who arranged for and constructed the network facilities,¹² to determine whether the telecommunications services were being provided by a common carrier. It is clear that the service providers are the LEC owners of NebCon, and therefore the service provider for purposes of the application for e-rate funding is a common

¹⁰The LECs' rights and obligations under the lease agreement were assigned to NebCon, "Amendment No. 1," Attachment 8.

¹¹Attachment 9.

¹²The two LECs obtained a certificate of public convenience and necessity from the Nebraska Public Service Commission to construct the network facilities. Application No. C-923, "Opinion and Findings" April 14, 1992 (Attachment 10).

carrier.

NebCon Provides Common Carrier Service

Even assuming the common carrier status of the LECs is not sufficient or that SLD will not impute common carrier status, NebCon is a common carrier because it offers service to the public indiscriminately.¹³ NebCon was established to provide service to the public, as the partnership agreement demonstrates:

The purpose for which the Partnership is organized is to own and operate fiber optic telecommunications cable facilities (the “Facilities”) which may be leased by the Partners or by third parties for use in connection with the provision of telecommunications services to the public....¹⁴

The Communications Act requires common carriers to provide services “upon reasonable request therefore.”¹⁵ The network services were available not just to the consortium, but also to others upon request. This is noted by the Nebraska Public Service Commission, which, in its grant of a certificate of public convenience and necessity to Consolidated and Nebraska Central to construct the network, stated that in addition to providing capacity to carry Distance Learning traffic, “Consolidated and Nebraska Central intend to lease a portion of the capacity of the facility between Broken Bow and Loup City to US West for the purpose of providing diverse

¹³*In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket 96-45, 12 FCC Rcd. 8776, 9178 (1997), citing *NARUC v. FCC*, 533 F2d 601, 608 (DC Cir.1976) (“*NARUC II*”); See also definition at 47 U.S.C. Sec. 153(10) (Sup. III 1997).

¹⁴NebCon Partnership Agreement, Section 1.5, “Purpose.” (Attachment 3).

¹⁵*In the Matter of Federal-State Joint Board on Universal Service*, Declaratory Ruling, CC Docket No. 96-45, 15 CR 114, 116 (1999), citing 47 U.S.C. Sec. 201(a).

routing.”¹⁶ **Grant of the Application is in the Public Interest**

Congress established the telecommunications discount or e-rate program in accordance with specific “universal service principles,” among them was a commitment to “access to telecommunications and information services in rural and high cost areas.”¹⁷ Congress further mandated that the discount for telecommunications services provided to schools and libraries in rural areas be an amount “appropriate and necessary to ensure affordable access to and use of such services.”¹⁸

The consortium’s distance learning proposal affords small schools in rural areas, which have limited resources, the opportunity to offer courses they otherwise could not offer on site. The large, 70% discount awarded to STEP in the first year of funding (the maximum discount was 90%) reflects the rural, low-income nature of the area, and the need of its educational institutions. Clearly, the distance learning program, made possible by the NebCon network, furthers the universal service objectives of the Telecommunications Act of 1996, and is the kind of program that Congress intended to fund.

In addition to contributing to improving the educational services of rural Nebraska, the program has also contributed to the long-term economic health of this remote region.¹⁹ The funding of the program is therefore clearly in the public interest. The Nebraska PSC recognized

¹⁶Attachment 10 at p.3.

¹⁷Section 254(b)(3) of The Telecommunications Act of 1996.

¹⁸Section 254(h)(1)(B) of The Telecommunications Act of 1996.

¹⁹See Wall Street Journal article, Nov. 24, 1994, and other local news articles, Attachment 11.

the public interest benefit of the NebCon network, which is why it granted Consolidated and Nebraska Central a certificate of convenience to construct the network.

Denial of Funding was an Incorrect Response

In 1998, the first year it sought funding under the e-rate program, STEP listed “NebCon Partnership” on a myriad of forms submitted to USAC/SLD: Form 486, the Billed Entity Application Reimbursement (BEAR) form, and the application form (Form 471). Notwithstanding the disclosure of NebCon as a partnership in Year 1, SLD granted STEP’s application.

The SLD denied funding the following year for the reason that NebCon was a partnership, and not a common carrier, and therefore the consortium was not eligible for the discount in Year 2. This drastic decision - to deny funding in the second year of e-rate funding under the contract for telecommunications services - left the schools with a liability of approximately \$75,000 for the distance learning services. SLD’s about face on STEP’s application incorrectly and unfairly left the schools with an enormous financial burden, one that they could not have anticipated.

In view of the circumstances - a meritorious program, a rural, low income area - one would have expected the SLD to work with the schools to remedy what can at worst be described as a ministerial mistake - listing NebCon, rather than its parent LECs as the telecommunications service provider in the application material. STEP sought to rectify the situation by substituting Nebraska Central for NebCon as the provider, but SLD rejected that effort, in the mistaken belief that STEP was substituting service providers.

SLD’s own internal guidelines for granting an appeal directs that an appeal be granted where an applicant made a mistake in information provided in or with the application leading to a

denial of funding.²⁰ Under these guidelines, SLD should have recognized that service was being provided by a common carrier, and the application for funding should have been granted.

Alternatively, SLD should have remedied the mistake in the application by substituting Nebraska Central as the provider, as the applicant requested.

The SLD's decision denying funding for Year 2 has long-term negative implications for STEP's interactive video and other advanced services²¹, and for that reason, STEP requests that the Commission decide this matter expeditiously. Until a final decision is rendered by the Commission, there is uncertainty as to the appropriate form that the application for services described herein should take. At the present time, NebCon and the LECs are working with the schools on a plan to upgrade to a digital system at the end of the existing contract. The upgraded system will require universal service support through the e-rate program. An expeditious ruling will avoid jeopardizing that much needed support.

Conclusion

Nothing changed in the provision of telecommunications services to the schools from the first year of the e-rate program to the present. Yet, the SLD correctly approved funding for the first and third years, but denied funding in the second year. The only difference in *the application* was that a different SPN was listed on the funding application - a change in the form, not the substance of the application. In view of these facts, SLD should not have denied STEP's

²⁰SLD website, Attachment 12. A GAO report criticized the SLD for funding mistakes due to, among other things "unclear review criteria." "Schools and Libraries Program; Application and Invoice Review Procedures Need Strengthening," Report to the Subcommittee on Commerce, Justice State and the Judiciary, and Related Agencies, Committee on Appropriations, U.S. Senate, GAO-01-105, Dec. 2000 at p. 5.

²¹Sections 254(h)(2)(A) and 254(b)(2) of the Telecommunications Act of 1996.

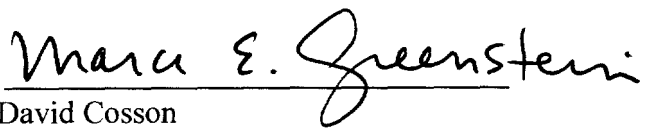
application for funding in Year 2 of the contract.

RELIEF SOUGHT

For the reasons stated herein, STEP respectfully requests that the Commission reverse the decision of the SLD and order that STEP's funding request for Year 2 be approved.

Respectfully submitted,

SANDHILLS TECHNOLOGY/
TELECOMMUNICATIONS PROJECT

By, 
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202-296-8890

Its Attorneys

July 2, 2001

ATTACHMENT 1



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 1999-2000

May 31, 2001

Rich Schlesselman
Anselmo-Merna Public Schools
P. O. Box 68
Merna, NE 68856

Post-it® Fax Note	7671	Date	6/5/01	# of pages	2
To	Loretta / Cheryl				
Co/Dept					
Phone #					
Fax #					

Re: Billed Entity Number: 148926
471 Application Number: 131643
Funding Request Number(s): 237457
Your Correspondence Dated: December 3, 1999

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year Two Funding Commitment Decision for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 30-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 237457
Decision on Appeal: Denied in full
Explanation:

- Your appeal requests the SLD change the vendor for this request from NebCon (SPIN Number 143006822) to Nebraska Central Telephone Company (SPIN Number 143002184), and provide discounts for this request. The basis of your claim is that NebCon is a partnership wholly owned by two common carriers, Nebraska Central Telephone Company and Consolidated Telephone Company. You also mention that you were funded for the same service in Funding Year One.
- The SLD is unable to grant your request because program rules do not allow for the changing of vendors on a request that has been denied. FCC regulations provide that only telecommunications carriers are eligible for universal service support. See 47 C.F.R. § 54.501(a). FCC regulations define telecommunications carriers as any

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provider of telecommunications services, and telecommunications services as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 C.F.R. § 52.5(g), (h). Because this mirrors the common law definition of a "common carrier," the FCC has determined that to be eligible to receive universal service support, the provider must provide telecommunications services on a common carrier basis. See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, FCC 97-157 ¶ 134 (rel. May 8, 1997). Your appeal has failed to bring forward persuasive information that NebCon is a common carrier of telecommunication services. Even though NebCon is owned by two common carriers NebCon itself does not meet the definition of a common carrier, as described above. Additionally the SLD will examine your claim that this service was funded previously, and if necessary the SLD will take steps to recover any monies that may have been funded in error.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Room TW-A325, Washington, DC 20554. Please reference CC Docket Nos. 96-45 and 97-21 on the first page of your appeal. Before preparing and submitting your appeal, please be sure to review the FCC rules concerning the filing of an appeal of an Administrator's Decision, which are posted on the website at <www.universalservice.org>. You must file your appeal with the FCC no later than 30 days from the date on this letter for your appeal to be filed in a timely fashion.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

Box 125 - Correspondence Unit, 80 South Jefferson Road, Whippany, New Jersey 07981
Visit us online at: <http://www.usa.universalservice.org>

ATTACHMENT 2

FACILITIES LEASE AGREEMENT

THIS AGREEMENT is entered into as of the 1st day of May, 1992, by and between CONSOLIDATED TELEPHONE COMPANY and THE NEBRASKA CENTRAL TELEPHONE CO. (hereinafter referred to as the "Companies"), Nebraska corporations with offices in Lincoln and Gibbon, Nebraska, respectively, SANDHILLS TECHNOLOGY/TELECOMMUNICATIONS EDUCATIONAL PROJECT (hereinafter referred to as the "Co-op"), a Nebraska educational entity with offices in Broken Bow, Nebraska, and CUSTER COUNTY SCHOOL DISTRICT NO. 044 (Ansley Public Schools), CUSTER COUNTY SCHOOL DISTRICT NO. 025 (Broken Bow Public Schools), SHERMAN COUNTY SCHOOL DISTRICT NO. 001 (Loup City Public Schools), CUSTER COUNTY SCHOOL DISTRICT NO. 015 (Anselmo-Merna Public Schools) and BLAINE COUNTY SCHOOL DISTRICT NO. 071 (Sandhills Public Schools) (hereinafter referred to in the aggregate as the "School Districts").

WITNESSETH:

WHEREAS, the Co-op and School Districts desire to provide an interactive two-way educational television network, specifically among and between the School Districts' High Schools located in Ansley, Broken Bow, Dunning, Loup City and Merna, all located in Nebraska, for educational purposes, and such network shall consist of two dark-fiber single-mode, fiber optic strands for an analog system serving these school sites (hereinafter referred to as the "Network");

WHEREAS, Companies, which are telephone public utilities operating under certificates of convenience and necessity issued by the Nebraska Public Service Commission, are willing to lease to the Co-op and the School Districts two dedicated dark fibers for the facilities and services of the Network in accordance with this Agreement.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, it is mutually undertaken and agreed as follows:

1. Companies Undertakings. The Companies shall:
 - 1.1 Engineer, construct, install and lease the Network to the Co-op and School Districts as set forth in Exhibit A (map of the Network), attached hereto and made a part hereof by reference, with the installation including the placement of up to 300 feet of dark fiber with appropriate connectors to

and within the interactive classrooms designated by the School Districts, as set forth in Exhibit B (List of Locations) attached hereto and made a part hereof by this reference.

- 1.2 Test and verify the quality of the fiber facilities leased by the Companies at the locations shown on Exhibit A.
 - 1.3 Exert their reasonable best efforts to complete the Network for activation not later than July 15, 1992; provided, however, that the completion date for Network activation shall be extended for such period of time during which completion is delayed or disrupted due to causes beyond Companies' reasonable control, or caused by inclement weather, Acts of God, fire, flood, breakdown of essential machinery, accident, delays in transportation, inability to obtain materials or parts from usual sources, strikes or labor difficulties. Under no circumstances will Companies be responsible or incur any liability for costs or damages of any nature (whether general, consequential or liquidated damages) arising out of or owing to any delays or failure to activate the Network by July 15, 1992 due to circumstances beyond its reasonable control.
 - 1.4 Maintain, service, and care for the Network, at the cost and under the terms stated in this Agreement.
2. The Co-op and School Districts' Undertakings. The Co-op and School Districts shall:
- 2.1 Be responsible for the purchase, installation and maintenance of optical transmission and receive equipment and interactive classroom video equipment to be located at each site which will provide programming on the Network.
 - 2.2 Pay to Consolidated Telephone Company the charges for the Network set forth in this Agreement, and any amendments hereto, on a monthly basis. (Consolidated Telephone Company shall, in turn, remit to The Nebraska Central Telephone Co. that portion of such payment as is agreed between the Companies.) Such charges will be billed in advance and will commence as of the date of activation of the Network. Payments shall be due from the Co-op and School Districts within thirty

(30) days after the date of billing or as of receipt of the subsequent billing, whichever occurs first.

3. Price and Terms of Payment.

3.1 Subject to compliance by the Co-op and the School Districts with the terms of this Agreement, Companies agree to allow the use of the Network by the Co-op and the School Districts with pricing as follows:

<u>SEGMENT</u>	<u>QUANTITY</u>	<u>UNIT PRICE</u>	<u>TOTAL</u>
Dunning to Merna Jct.			
Rural	34.76 mi	\$ 52.00/mo/mi	\$ 21,690/yr
Town	0.86 mi	\$ 156.00/mo/mi	\$ 1,610/yr
School	2 Units	\$ 15.00/mo	\$ 360/yr
Subtotals		\$ 55.35/mo/mi	\$ 23,660/yr
Merna Jct. to Broken Bow			
Rural	8.00 mi	\$ 80.00/mo/mi	\$ 7,680/yr
Subtotals		\$ 80.00/mo/mi	\$ 7,680/yr
Broken Bow to Ansley			
Rural	16.00 mi	\$ 56.00/mo/mi	\$ 10,752/yr
School/BB	1 Unit	\$ 15.00/mo	\$ 180/yr
School/ANS	1 Unit	\$ 15.00/mo	\$ 180/yr
Subtotals		\$ 57.88/mo/mi	\$ 11,112/yr
Ansley to Loup City			
Rural	23.00 mi	\$ 56.00/mo/mi	\$ 15,456/yr
School/LC	1 Unit	\$ 15.00/mo	\$ 180/yr
Subtotals		\$ 56.65/mo/mi	\$ 15,636/yr
GRAND TOTAL	<u>82.62 mi</u>	<u>\$ 58.59/mo/mi</u>	<u>\$ 58,088/yr</u>

The pricing shown on the foregoing table includes splice cabinet, patch panel, and up to 300 feet of fiber per location. The mileages shown on the foregoing table are "as designed". This Agreement shall be amended at the completion of construction to reflect "as built" mileages and prices.

3.2 The term of this Agreement shall be ten (10) years commencing on the date of Network activation. The Co-op and School Districts agree to pay the Companies the rates and charges as provided in Section 3.1 hereof, for such ten (10) year period. The Co-op and School Districts agree that in the event of termination of this Agreement during the initial ten (10) year term, the Co-op and School Districts shall pay to the Companies termination liability which shall be the present value of the remaining monthly payments as shown on Exhibit C with the time value of money calculated at 7.5%. Exhibit C, attached hereto and incorporated hereby by this reference, sets forth termination liability as of the end of each month of the initial term of this Agreement. In the event that the Co-op and School Districts fail to pay to the Companies any applicable termination liability or other payments required hereunder on a timely basis, the Companies shall have the right to pursue all legal or equitable remedies to effect collection thereof.

3.3 As stated hereinabove, the term of this Agreement shall be for a minimum period of ten (10) years commencing on the date of Network activation. Thereafter, the parties agree that this Agreement shall be automatically renewed for up to three (3) successive three-year periods unless terminated by any party hereto providing all other parties with written notice of termination not less than sixty (60) days prior to the end of the initial term or any renewal term of this Agreement. During any renewal term of this Agreement, unless otherwise mutually agreed by all parties hereto, all terms of this Agreement shall continue in full force and effect except for the payments set forth in Section 3.1 hereof. The parties agree to enter into good faith negotiations regarding the payments for the Network which shall apply to any renewal term of this Agreement.

4. Maintenance and Quality of Network.

4.1 Subject to the terms and conditions contained herein, Companies agree to maintain the Network in accordance with acceptable industry standards. Specifically, Companies shall provide a single window of single-mode fiber optic cable with attenuation of 0.4 db/km or less at 1310 nm, enabling such School District to obtain multi-channel, two-way video and audio signals. If the Network falls below these specifications, as tested by the Co-op or its representative, Companies shall

have seven (7) calendar days in which to restore the Network to required specifications. If Companies do not bring the signal levels into compliance within such seven (7) calendar day period, Co-op and School Districts shall not be obligated to pay a monthly lease fee for that particular month and for the period non-compliance continues to exist.

- 4.2 It is understood and agreed between the parties that the Companies do not guarantee the uninterrupted working of the Network. No reduction in monthly payments shall be made for interrupted service caused by the negligence of agents or employees of the Co-op or the School Districts, nor for any other interrupted service (except in case of disasters), unless the interruptions shall have continued for a period of more than 24 hours after the Companies shall have received notice of the interruption. In the case of widespread disaster resulting in interruption of service, no reduction in the monthly payments shall be made unless the same shall have continued for a period of more than two (2) days. In no event shall the liability of the Companies exceed the monthly payment allocable to the portion of the Network which has been rendered inoperative for the period of time of such non-operation.
- 4.3 Except as set forth in Section 4.2 hereinabove, the Co-op and the School Districts agree that the Companies shall not be liable to the Co-op and the School Districts for lost revenues or any special, incidental or consequential damages for loss, damage or expense, directly or indirectly arising from the use of or inability to use the Network. Further, the Companies shall not be liable for personal injury or property damage to the Co-op's and the School Districts' property or the property of third parties except as may be caused by the gross negligence or intentional wrongful acts by the Companies or their agents.
- 4.4 The Network shall be maintained and repaired in a timely fashion. Companies intend to maintain the Network in order to meet the performance standard outlined in Section 4.1. Companies shall provide necessary on-site maintenance and repair service within 24 hours upon notification of need for repair. The period of maintenance and repair service will be 24 hours per day, seven days per week.

- 4.5 The Co-op and School Districts shall be solely responsible for the care and maintenance of all interactive studio equipment and fiber optic terminal equipment used by and located at the School Districts' facilities.
- 4.6 The Co-op shall compensate the Companies at their prevailing hourly rate (currently \$30 per hour) for service calls initiated by the Co-op that are not due to failure or out-of-specification operation of the Network.
- 4.7 Any service outage, Network trouble or other technical problems with the Network for which Companies have assumed the maintenance and repair obligation shall, for the convenience of the parties, be reported to: _____
at telephone number _____.

5. Permitted Use.

- 5.1 The Network shall be owned by the Companies. The Co-op and School Districts shall have use of the capacity of one window of two (2) fibers solely for educational purposes. Any use of the Network for non-educational purposes is strictly prohibited.
- 5.2 The Co-op, with the prior written consent of the Companies which shall not be unreasonably withheld, may assign this Agreement and the rights contained herein to another educational entity that represents the interests of the School Districts, provided the fiber continues to be used for solely educational purposes. Companies shall receive sixty (60) days notice of such requested assignment. Correspondingly, Companies may assign their ownership rights under the same conditions provided that such assignment is not in conflict with any provision of this Agreement. Further, the Co-op and School Districts shall not, without the express prior written consent of Companies, sell, lease, license, provide access, or otherwise transfer all or any part of the rights granted hereunder for use by other than educational institutions. The Co-op and School Districts shall remain financially obligated to the Companies to perform the covenants of this Agreement unless specifically released by the Companies.
- 5.3 Companies shall not prevent inclusion of additional educational entities into the Network provided there is no violation of the provisions of this Agreement, and the Co-op and School Districts pay

all costs associated with such inclusion and the obtaining of any required federal and state regulatory approvals. Companies shall accept no responsibility for degradation of video signal quality due to the inclusion of other entities in the Network.

6. Representations and Warranties by the Co-op and School Districts. The Co-op and School Districts represent and warrant to Companies that:

- 6.1 The Co-op is an educational entity validly organized under the authority of the State of Nebraska to provide educational services to the School Districts which comprise it and has the full power and authority to enter into and perform all requirements under this Agreement.
- 6.2 The School Districts are each public school districts organized and existing in accordance with the laws of the State of Nebraska, each of which possess the power and authority to levy and collect taxes to support their operations, including the costs of the Network as provided herein.
- 6.3 The execution, delivery, and performance of this Agreement by the Co-op and School Districts has been duly and validly authorized by all necessary action on the part of the Co-op and School Districts. This Agreement constitutes the valid and binding obligation of the Co-op and School Districts and is enforceable against the Co-op and School Districts in accordance with its terms.
- 6.4 The Co-op and School Districts will not use or knowingly permit the use of the Network in any manner that would violate Section 5.1 above or any statute, rule, regulation or other law to which the Co-op or School Districts or the Network is subject.

7. Representations and Warranties by Companies. Companies represent and warrant to the Co-op and the School Districts that:

- 7.1 Companies are corporations duly organized and existing under the laws of Nebraska and have the corporate power and authority under applicable law to enter into and perform this Agreement.

- 7.2 The execution, delivery and performance of this Agreement by Companies has been duly and validly authorized by all necessary action on the part of Companies. This Agreement constitutes a valid and binding obligation of Companies.

8. Miscellaneous.

- 8.1 This Agreement in no way constitutes or creates a joint-venture, partnership or principal-agent relationship between the parties. Companies are providing facilities and services to the Co-op and School Districts for two-way interactive educational instruction.
- 8.2 This Agreement has been executed in the State of Nebraska and shall be construed and enforced in accordance with the laws of Nebraska.
- 8.3 Any notices required or provided for herein shall be in writing, and shall be delivered personally or be sent by certified mail, return receipt requested, addressed as follows:

To the Nebraska: Sandhills Technology/
Telecommunications
Educational Project
c/o Broken Bow Public Schools
323 North 7th Avenue
Broken Bow, NE 68822

To Companies: Consolidated Telephone Company
6900 Van Dorn - Suite 21
P. O. Box 6147
Lincoln, NE 68506

and:

The Nebraska Central
Telephone Co.
22 LaBarre Street
P. O. Box 700
Gibbon, NE 68840

- 8.4 This Agreement constitutes the entire agreement of the parties hereto with respect to its subject matter, and supersedes all prior agreements and undertakings with respect thereto. This Agreement shall not be amended, nor any provision waived, except in writing duly executed by the parties.

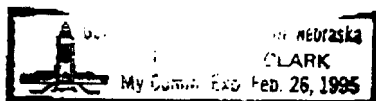
The failure of any party at any time to require specific performance of any provision shall in no manner affect the right at a later date to enforce the same. No waiver of any provision shall be deemed to be or be construed as a further or continuing waiver of the same or any other provision.

8.5 This Agreement may be executed in more than one counterpart, and each shall be considered an original.

IN WITNESS WHEREOF, the Co-op, the School Districts and Companies have executed this Agreement as of the day and year first above written.

ATTEST:

M. Louise Clark



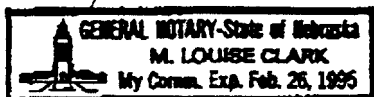
SANDHILLS TECHNOLOGY/
TELECOMMUNICATIONS
EDUCATIONAL PROJECT

By: *[Signature]*

Its: *Director*

ATTEST:

M. Louise Clark

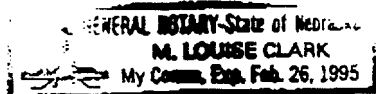


BLAINE COUNTY SCHOOL DISTRICT NO. 071
(SANDHILLS PUBLIC SCHOOLS)

By: *Mary Ann*

ATTEST:

M. Louise Clark



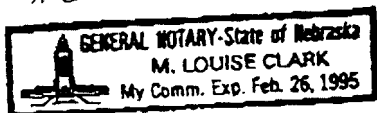
CUSTER COUNTY SCHOOL DISTRICT NO. 015
(ANSELMO-MERNA PUBLIC SCHOOLS)

By: *Charles F. McNamee*

Its: *Pres. of the Board*

ATTEST:

M. Louise Clark

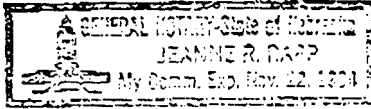


CUSTER COUNTY SCHOOL DISTRICT NO. 025
(BROKEN BOW PUBLIC SCHOOLS)

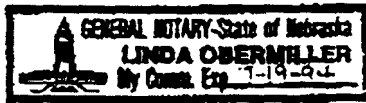
By: *Roger Hudson*

Its: *Vice President*

ATTEST:

Jeanne R. RappCUSTER COUNTY SCHOOL DISTRICT NO. 044
(ANSLEY PUBLIC SCHOOLS)By: *Paul Bennett*
Its: *Authorized Member*

ATTEST:

Linda ObermillerSHERMAN COUNTY SCHOOL DISTRICT NO. 001
(LOUP CITY PUBLIC SCHOOLS)By: *Michael Rademaker*
Its: *Authorized Board Member*

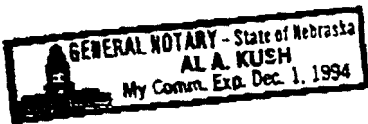
ATTEST:

Al A. Kush

CONSOLIDATED TELEPHONE COMPANY

By: *Jeff E. Thompson*
Its: *Sec.*

ATTEST:

Al A. Kush

THE NEBRASKA CENTRAL TELEPHONE CO.

By: *Dennis M. Hayes*
Its: *President*

EXHIBIT A

Sandhills Technology-Telecommunications Educational Project

Two-way Interactive Television Network

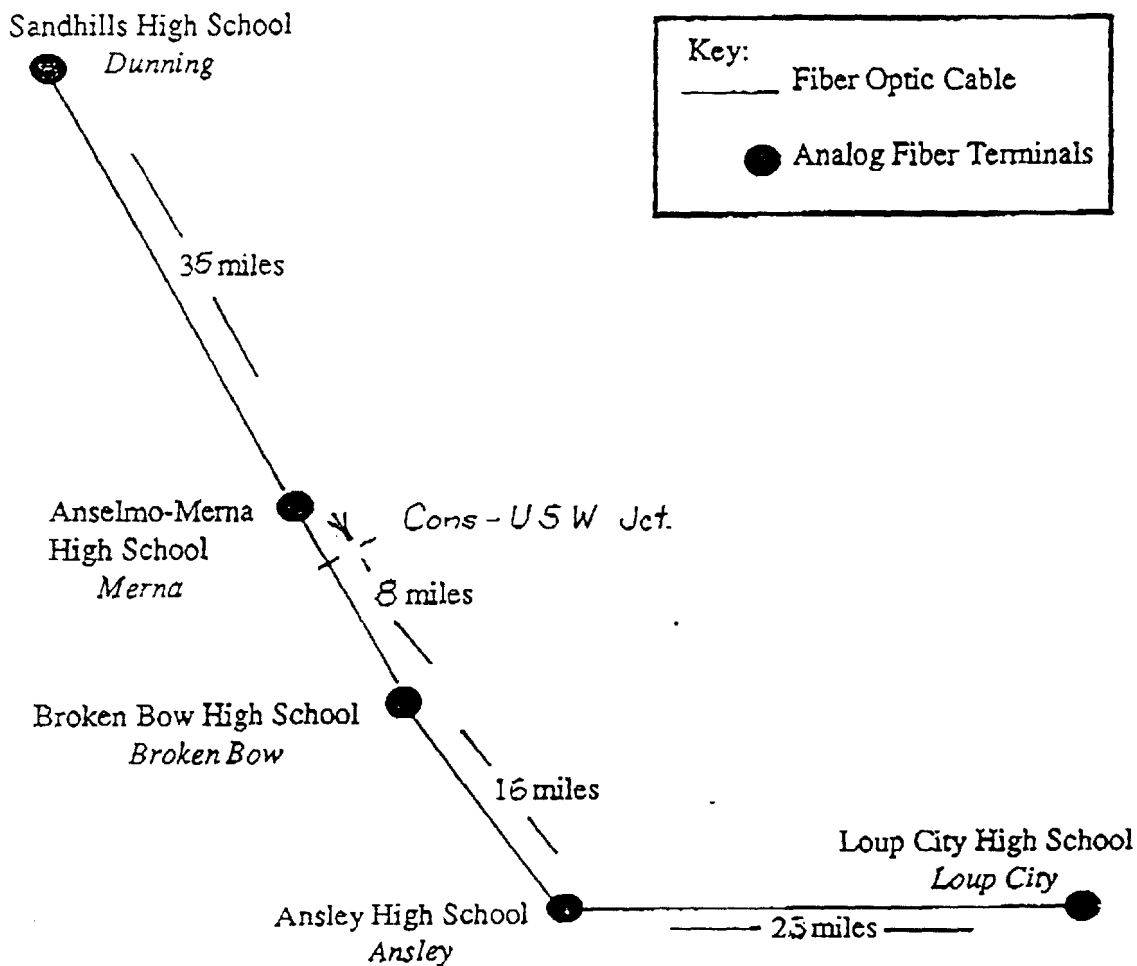
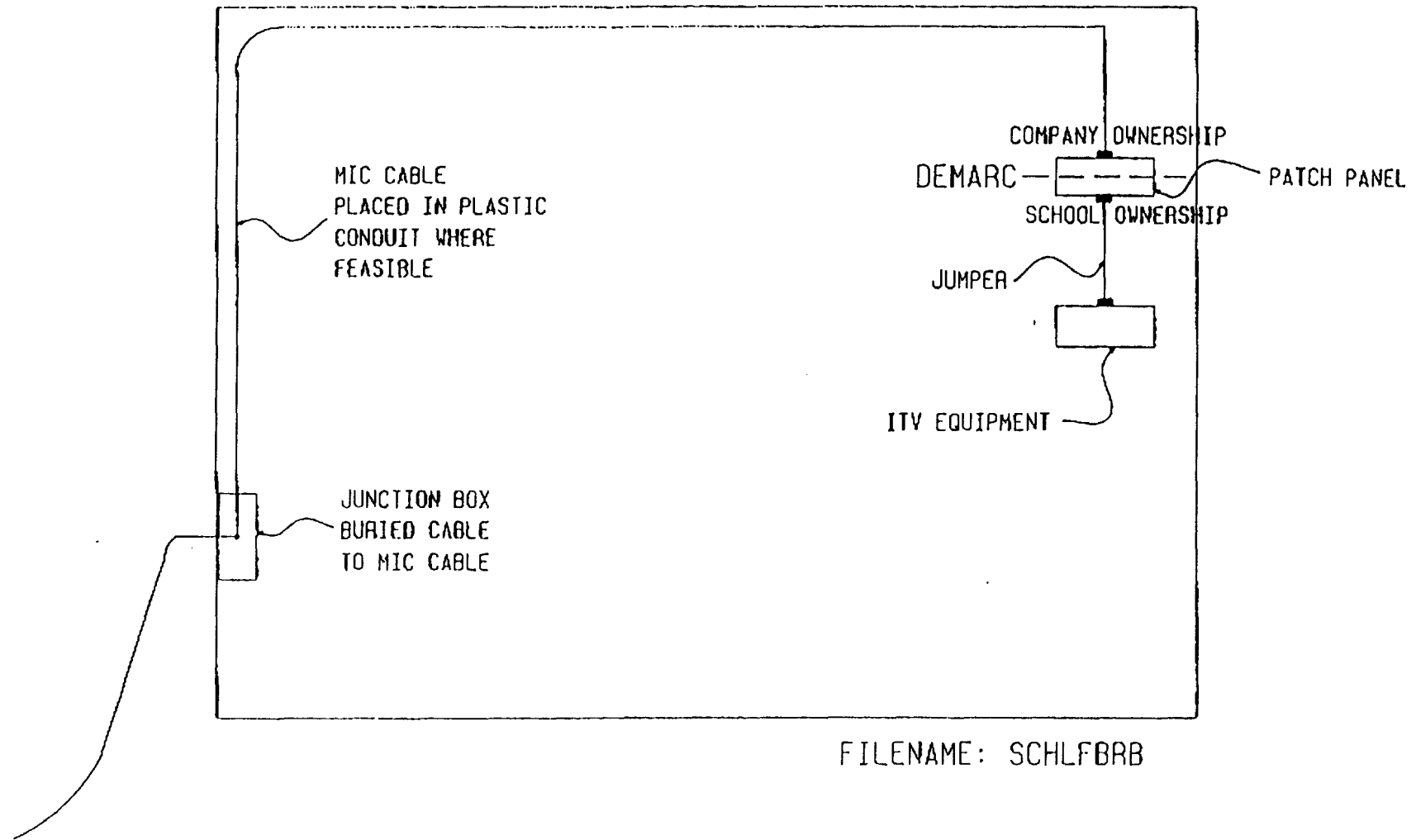


EXHIBIT B

EXHIBIT B
DETAIL OF SCHOOL INSTALLATION



FILENAME: SCHLFBRB

EXHIBIT C

TERMINATION LIABILITY

TERMINATION PAYMENT AT END OF MONTH

<u>MONTH</u>	<u>AMOUNT</u>	<u>MONTH</u>	<u>AMOUNT</u>	<u>MONTH</u>	<u>AMOUNT</u>
1	405,508.81	46	286,091.60	91	128,027.92
2	403,202.57	47	283,039.01	92	123,987.43
3	400,881.92	48	279,967.34	93	119,921.68
4	398,546.76	49	276,876.46	94	115,830.53
5	396,197.01	50	273,766.28	95	111,713.80
6	393,832.58	51	270,636.65	96	107,571.34
7	391,453.37	52	267,487.46	97	103,403.00
8	389,059.28	53	264,318.59	98	99,208.60
9	386,650.24	54	261,129.92	99	94,987.99
10	384,226.13	55	257,921.31	100	90,741.00
11	381,786.88	56	254,692.65	101	86,467.46
12	379,332.38	57	251,443.81	102	82,167.22
13	376,862.54	58	248,174.67	103	77,840.09
14	374,377.27	59	244,885.10	104	73,485.93
15	371,876.46	60	241,574.96	105	69,104.55
16	369,360.02	61	238,244.14	106	64,695.78
17	366,827.85	62	234,892.50	107	60,259.47
18	364,279.86	63	231,519.91	108	55,795.42
19	361,715.94	64	228,126.24	109	51,303.48
20	359,136.00	65	224,711.36	110	46,783.46
21	356,539.93	66	221,275.14	111	42,235.19
22	353,927.64	67	217,817.45	112	37,658.49
23	351,299.02	68	214,338.14	113	33,053.19
24	348,653.98	69	210,837.09	114	28,419.10
25	345,992.40	70	207,314.15	115	23,756.06
26	343,314.18	71	203,769.20	116	19,063.87
27	340,619.23	72	200,202.09	117	14,342.35
28	337,907.43	73	196,612.68	118	9,591.32
29	335,178.69	74	193,000.85	119	4,810.60
30	332,432.89	75	189,366.44	120	0.00
31	329,669.93	76	185,709.31		
32	326,889.70	77	182,029.33		
33	324,092.09	78	178,326.34		
34	321,277.00	79	174,600.22		
35	318,444.31	80	170,850.80		
36	315,593.92	81	167,077.95		
37	312,725.72	82	163,281.52		
38	309,839.59	83	159,461.36		
39	306,935.42	84	155,617.33		
40	304,013.10	85	151,749.27		
41	301,072.51	86	147,857.04		
42	298,113.55	87	143,940.48		
43	295,136.09	88	139,999.44		
44	292,140.03	89	136,033.77		
45	289,125.24	90	132,043.31		